

CHAPTER NO. 784

HOUSE BILL NO. 3512

By Representatives McMillan, Armstrong, Marrero, Tidwell, Brenda Turner, Maddox, Fitzhugh, Fowlkes, Shaw, Buttry, Wood, Sharp, Vincent, Gresham, Coleman

Substituted for: Senate Bill No. 3394

By Senators Crutchfield, Graves, Miller, Kurita, Kilby, Ramsey, Herron and Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Title 4; Title 20; Title 29; Title 39; Title 40; Title 41; Title 47; Title 53; Title 56; Title 68 and Title 71, relative to the prevention of fraud and abuse in TennCare.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, is amended by adding a new part 25 as follows:

SECTION_____. (a)(1)(A) A person, including an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person to obtain, by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, or statute governing TennCare:

(i) medical assistance benefits or any assistance provided pursuant to any rule, regulation, procedure, or statute governing TennCare to which such person is not entitled, or of a greater value than that to which such person is authorized, or

(ii) benefits by knowingly making a willfully false statement, or concealing a material fact relating to his or her personal or household income, thereby resulting in the assessment of a lower monthly premium than he or she would be required to pay if not for the false statement or concealment of a material fact.

(B) An offense under this subdivision is a Class E felony.

(2)(A) A person, firm, corporation, partnership or any other entity, including a vendor, other than an enrollee, recipient, or applicant, commits an offense who knowingly obtains, or attempts to obtain, or aids or abets any person or entity to obtain, by means of a willfully false statement, report, representation, claim or impersonation, or by concealment of any material fact, or by any other fraudulent means, or in any manner not authorized by any rule, regulation, procedure, or statute governing TennCare, medical assistance payments pursuant to any rule, regulation, procedure, or statute governing TennCare to which such person or entity is not entitled, or of a greater value than that to which such person or entity is authorized. For purposes of this subsection, "attempts to obtain" includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under this subdivision is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(3)(A) A person, firm, corporation, partnership or any other entity commits an offense which provides a willfully false statement regarding another's medical condition or eligibility for insurance, to aid or abet another in obtaining or attempting to obtain medical assistance payments, medical assistance benefits or any assistance provided under any rule, regulation, procedure, or statute governing TennCare to which the person is not entitled or to a greater value than that to which such person is authorized. For purposes of this subsection, "attempting to obtain" includes making or presenting to any person a claim for any payment under any rule, regulation, procedure, or statute governing TennCare, knowing such claim to be false, fictitious or fraudulent.

(B) An offense under this subdivision is a Class D felony unless the value of the property or services obtained meets the threshold set for a Class B or Class C offense under § 39-14-105, in which case the appropriate higher class shall apply. In addition to any other penalty, a sentence that includes a fine, when imposed upon an entity or upon a person for actions benefiting an entity, shall include the corporation fine specified in § 40-35-111.

(b)(1) In addition to any other penalties provided for any person, firm, corporation, partnership or other entity under subsection (a), the court shall also:

(A) Order restitution to the departmentTennCare in the greater of the total amount of all medical assistance payments made to all providers, or the total amount of all payments to a managed care entity, related to the services underlying the offense; and

(B) Report the person or entity to the appropriate professional licensure board or the department of commerce and insurance for disciplinary action.

(2) In addition to any other penalties provided under this section, the court may also, to the full extent permitted by federal law and the TennCare waiver as interpreted by the CMS, order any such person or entity disqualified from participation in the medical assistance program; such disqualification may also apply to any person who is convicted of a criminal offense involving the selling of prescription drugs obtained through the TennCare program. Any person or entity disqualified from participation in the medical assistance program shall make restitution in the total amount of the medical assistance or underpayment which forms the basis for the conviction before such person or entity can re-enroll in the TennCare program.

(3) A subsequent denial of eligibility or denial of a claim for payment does not, of itself, establish proof of falsity of a statement, representation, report or claim for payment under subsection (a).

(c) Nothing in this section shall be construed as prohibiting a person or entity violating the provisions of this section from being prosecuted for theft of property or services under title 39, part 14.

(d) In addition to any other remedy available, including those provided in this section, the state may recover from any person or such person's estate, or from a firm, corporation, partnership or other entity, including a vendor, the amount of medical assistance benefits or payments improperly paid as a result of fraudulent means or actions not authorized by any rule, regulation, procedure, or statute governing TennCare.

(e) Notwithstanding any other provision of law to the contrary, prosecutions for violations of this section shall be commenced within four (4) years next after the commission of the offense.

SECTION_____. (a) Upon submitting a claim for or upon receiving payment for goods, services, items, facilities or accommodations under the TennCare program, a managed care organization, provider, subcontractor, or any other person or entity shall maintain adequate records for a minimum of five (5) years after the date on which payment was received, if payment was received, or for five (5) years after the date on which the claim was submitted, if the payment was not received. The bureau of TennCare shall have the authority to make appropriate and reasonable exceptions to the requirements of this subsection upon a showing of good cause.

(b) Failure to maintain adequate records is defined as negligently failing to maintain such records as are necessary to disclose fully the nature of the goods, services, items, facilities, or accommodations for which a claim was submitted or payment was received by the managed care organization, provider, subcontractor, or any other person or entity receiving funds originating from the TennCare program. Failure to maintain adequate records during an audit period is punishable by recovery of one hundred fifty percent (150%) of the amount payable to the person or entity, directly or indirectly, using TennCare funds for the TennCare-related services for which the person or entity has failed to maintain records. Failure to maintain adequate records during a subsequent audit period is punishable by recovery of three hundred percent (300%) of the amount payable to the person or entity, directly or indirectly, using TennCare funds for the TennCare-related services for which the person or entity has failed to maintain records. Any further offense within five (5) years of the second offense may result in a recommendation by the Office of TennCare Inspector General to the bureau of TennCare to restrict the person or entity from receiving future TennCare payments. These matters shall be referred to the attorney general for recovery of funds.

SECTION_____. (a) All managed care organizations, contractors, subcontractors, providers or any other person or entity shall advise the Office of TennCare Inspector General immediately when there is actual knowledge, not subject to a testimonial privilege, that an act of recipient, enrollee, or applicant fraud is being, or has been committed. The Office of TennCare Inspector General shall review the information to determine if there is a sufficient basis to warrant a full investigation. The Office of TennCare Inspector General is authorized to establish an electronic system for treating physicians to report recipient, enrollee or applicant fraud.

(b) All managed care organizations, contractors, subcontractors, providers or any other person or entity shall advise the MFCU immediately when there is actual knowledge, not subject to a testimonial privilege, that an act of provider fraud is being, or has been committed. The MFCU shall review the information to determine if there is a sufficient basis to warrant a full investigation. MFCU is authorized to establish an electronic system for treating physicians to report provider fraud.

(c) Any person or entity making a complaint or furnishing a report, information or records in good faith pursuant to this section is immune from civil liability for making such complaint or report.

(d) Willful failure to report such fraud shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for each finding to be assessed by office of TennCare inspector general.

SECTION 2. Tennessee Code Annotated, Section 71-5-182, is amended by deleting the section in its entirety and by substituting instead the following language:

(a)(1) Any person who:

(A) Presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing such claim is false or fraudulent;

(B) Makes, uses, or causes to be made or used, a record or statement to get a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false;

(C) Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing such claim is false or fraudulent; or

(D) Makes, uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the Medicaid program, knowing such record or statement is false;

is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000), plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) Such person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had

commenced under § § 71-5-181--71-5-186 with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person. A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, "knowing" and "knowingly" mean that a person, with respect to information:

(1) Has actual knowledge of the information;

(2) Acts in deliberate ignorance of the truth or falsity of the information; or

(3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) "Claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state.

(d) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general; such action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the medicaid program any money or property, real or personal, which may have been acquired by means of such act.

SECTION 3. The commissioner of the department of finance and administration, or the commissioner's designee, shall appear before and report in writing on fraud and abuse in the TennCare program to the TennCare oversight committee, the senate general welfare, health and human resources committee and the house health and human resources committee on at least an annual basis. Such report shall include commentary concerning implementation, rules and regulations concerning senate bill 3394 / house bill 3512 and senate bill 3392 / house bill 3513 if such bills become law.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 13, 2004


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 28th day of May 2004


PHIL BREDESEN, GOVERNOR